

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF ORANGE COUNTY FLORIDA

These Comments are filed by Orange County, FL in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Orange County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community we have a cable "franchise". The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Our community also has a Cable Ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Orange County has a population of approximately 1.1 million. Our franchised cable providers are Bright House, Adelphia (Comcast), Florida Cable, and Bellsouth. Orange County has negotiated cable franchises since 1972.

Our Current Franchise

Our current franchise with Bright House began on October 26, 2002 and expires on October 25, 2012; Adelphia began on December 18, 2001 and expires on

December 18, 2011; Florida Cable began on August 10, 1998 and expires October 16, 2011, Bellsouth began on October 20, 2000 and expires on October 10, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with any incumbent provider.

Florida has a Communication Services Tax that provides funding to local governments. The tax rate is approximately 4.98% of the cable billings. Orange County does not require a franchise fee.

We currently have no channels (or capacity) devoted to public access; no channels (or capacity) devoted to educational access; and two channels (or capacity) devoted to government access. We air programming produced by the local school board on one of our government access channels.

Our franchise with Bright House requires them to provide Orange County with a PEG support grant of \$1,000,000 over the ten-year term of the franchise to purchase equipment. Orange County receives \$25,000 quarterly totaling \$100,000 per year. Our other franchises made lump sum PEG support contributions at the inception of their agreements.

Our franchise contains the no institutional network ("I-Net") requirements:

Emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. Our franchise requires the Franchisee comply with all applicable law, including FCC rules, regarding emergency use of its cable system and facilities. It also requires a standby power generating capacity at its cable head-end capable of providing at least two hours of emergency power supply and that standby batteries capable of providing the same level of emergency power be installed in the distribution plant.

Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The Franchisee shall comply with the customer service requirements set forth in our Cable Ordinance and required under applicable federal law. The Ordinance requirements are summarized as follows: the Franchisee shall maintain all parts of its system in good condition and with standards no less than generally observed by the cable television industry. The Franchisee shall provide sufficient number of employees to provide safe, adequate, and prompt service for all customers and facilities. The Franchisee's billing statements shall show a specific due date no earlier than ten days after the date of the beginning of service and any late fees levied in excess of \$4.00 shall meet the satisfaction of Orange County. The Franchisee shall comply with all customer

service requirements applicable to cable systems as adopted by the FCC and other applicable law concerning customer service requirements, consumer protection and privacy, and unfair or deceptive trade practices. Any rate increases require a 30-day written notice to its customers and Orange County.

Our franchise agreements contain no build-out schedule for the cable operator.

Our franchise requires that the Franchisee be required to extend its distribution facilities and provide service to residential and non-residential subscribers in any area within the franchise territory where there exists twenty dwelling units per strand mile of cable extension required or portion thereof where the ratio of twenty dwelling units per strand mile is maintained.

In order to ensure that our residents have access to current telecommunications technologies, our franchises contains the following rebuild or upgrade requirements: Our franchises with Bright House and Adelphia have always been on the forefront of new technology and continue to offer the latest services to our customers. All systems providing cable modem service also provides cable video services if the customer desires.

Our franchises adopt the national policy with respect to facilitating small business entry into telecommunications and prohibit barriers to the telecommunications market. The County adopts the "Level Playing Field" provision in accordance with Florida Statutes.

Our franchise contains the following insurance and bonding requirements: "The Franchisee shall obtain and maintain \$5,000,000 commercial general liability and for business automobile liability covering personal and bodily injury, broad form property damages, products and completed operations, covering owned, leased, hired, and non-owned vehicles and equipment. Broadcasters' errors and omissions coverage of \$1,000,000 covering infringements of copyrights. Workers Compensation coverage required by the state and employer's liability is \$500,000. The Franchisee shall provide and maintain a security fund in the form of a cash security deposit, a bond or an irrevocable letter of credit in a form acceptable to the County in an amount not less than \$150,000."

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it may access the public rights-of-way. The Franchisee is required to permit general engineering project construction, right-of-way utilization and commercial and subdivision improvements in the right-of-way. The fee for the general engineering permit is approximately \$400 and the other two

permits have a basic charge of \$90 with addition charges ranging from \$90-\$270 dependent on the level of work required.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The County shall have the right to inspect all records, facilities, and properties located in the public right-of-way upon reasonable notice.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived, (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise agreements provide that changes in law which affect the rights or responsibilities of either party are treated as follows: A written application may be filed with the County requesting modification of a franchise agreement. The requirements are spelled out in our local Cable Ordinance.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. Our Franchise for instance offers one public hearing when considering an application for an initial franchise and offers an option of a second public hearing 10 days prior to the actual approval when it is deemed necessary.

Competitive Cable Systems

Our community granted a competitive franchise to Adelphia, a cable over-builder, in 2001 and Adelphia is providing service in our community today. A franchise was granted to Florida Cable in 1998 and that company is providing service today. A franchise was granted to Bellsouth in 2000. However, that franchise is currently inactive. Adelphia offers competitive cable rates in some areas served by Bright House. Florida Cable is an area franchise that services a specific area and is the only provider in that area. Orange County has not denied any provider the opportunity to serve our community.

Orange County has mechanisms in place to offer the same or a comparable franchise to a competitor upon request. We are very flexible with our franchises offering area franchises to small companies and requiring very little build out. Our goal has always been to offer cable to as many subscribers as possible in as many areas as possible. Due to the many changes within the cable industry over the last several years, and as a result of numerous acquisitions and corporate mergers, we have had many franchise transfers. These have, in general, been a very easy process with few difficulties and were generally consummated in a timely manner. Orange County is always open to new cable providers offering competitive services to our citizens and works very diligently to ensure we do not impede this process.

Conclusions

The local cable franchising process functions well in Orange County. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Issuing cable franchises at the local level, ensures that cable operators are provided access to County rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities are undertaken in a manner that is in accordance with local requirements. Local cable franchising also ensures that our community's specific needs are met and that customers have a local advocate to address their cable complaints.

Local franchises thus provide a means for local governments to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington D.C. to handle matters of specifically local interest.

Finally, local franchises allow every community, including ours, to have a voice in how local cable systems are implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) should be available to meet local needs. These factors are equally present for new entrants as for existing users.

Orange County, FL therefore respectfully requests that the Commission creates no rule that would interfere with local government authority over telecommunications franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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